

VETERANS EMPLOYMENT OPPORTUNITIES ACT OF 1996

JULY 12, 1996.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. CLINGER, from the Committee on Government Reform and Oversight, submitted the following

R E P O R T

[To accompany H.R. 3586]

[Including cost estimate of the Congressional Budget Office]

The Committee on Government Reform and Oversight, to whom was referred the bill (H.R. 3586) to amend title 5, United States Code, to strengthen veterans' preference, to increase employment opportunities for veterans, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Veterans Employment Opportunities Act of 1996".

SEC. 2. EQUAL ACCESS FOR VETERANS.

(a) COMPETITIVE SERVICE.—Section 3304 of title 5, United States Code, is amended by adding at the end the following:

“(f)(1) No preference eligible, and no individual (other than a preference eligible) who has been separated from the armed forces under honorable conditions after 3 or more years of active service, shall be denied the opportunity to compete for an announced vacant position within an agency, in the competitive service or the excepted service, by reason of—

- “(A) not having acquired competitive status; or
- “(B) not being an employee of such agency.

“(2) Nothing in this subsection shall prevent an agency from filling a vacant position (whether by appointment or otherwise) solely from individuals on a priority placement list consisting of individuals who have been separated from the agency due to a reduction in force and surplus employees (as defined under regulations prescribed by the Office).”.

(b) CIVIL SERVICE EMPLOYMENT INFORMATION.—

(1) VACANT POSITIONS.—Section 3327(b) of title 5, United States Code, is amended by striking “and” at the end of paragraph (1), by redesignating paragraph (2) as paragraph (3), and by inserting after paragraph (1) the following:

“(2) each vacant position in the agency for which competition is restricted to individuals having competitive status or employees of such agency, excluding any position under paragraph (1), and”.

(2) ADDITIONAL INFORMATION.—Section 3327 of title 5, United States Code, is amended by adding at the end the following:

“(c) Any notification provided under this section shall, for all positions under subsection (b)(1) as to which section 3304(f) applies and for all positions under subsection (b)(2), include a notation as to the applicability of section 3304(f) with respect thereto.

“(d) In consultation with the Secretary of Labor, the Office shall submit to Congress and the President, no less frequently than every 2 years, a report detailing, with respect to the period covered by such report—

- “(1) the number of positions listed under this section during such period;
- “(2) the number of preference eligibles and other individuals described in section 3304(f)(1) referred to such positions during such period; and
- “(3) the number of preference eligibles and other individuals described in section 3304(f)(1) appointed to such positions during such period.”.

(c) GOVERNMENTWIDE LISTS.—

(1) VACANT POSITIONS.—Section 3330(b) of title 5, United States Code, is amended to read as follows:

“(b) The Office of Personnel Management shall cause to be established and kept current—

“(1) a comprehensive list of all announcements of vacant positions (in the competitive service and the excepted service, respectively) within each agency that are to be filled by appointment for more than 1 year and for which applications are being or will soon be accepted from outside the agency’s work force; and

“(2) a comprehensive list of all announcements of vacant positions within each agency for which applications are being or will soon be accepted and for which competition is restricted to individuals having competitive status or employees of such agency, excluding any position required to be listed under paragraph (1).”.

(2) ADDITIONAL INFORMATION.—Section 3330(c) of title 5, United States Code, is amended by striking “and” at the end of paragraph (2), by redesignating paragraph (3) as paragraph (4), and by inserting after paragraph (2) the following:

“(3) for all positions under subsection (b)(1) as to which section 3304(f) applies and for all positions under subsection (b)(2), a notation as to the applicability of section 3304(f) with respect thereto; and”.

(3) CONFORMING AMENDMENT.—Section 3330(d) of title 5, United States Code, is amended by striking “The list” and inserting “Each list under subsection (b)”.

SEC. 3. SPECIAL PROTECTIONS FOR PREFERENCE ELIGIBLES IN REDUCTIONS IN FORCE.

Section 3502 of title 5, United States Code, as amended by section 1034 of the National Defense Authorization Act for Fiscal Year 1996 (Public Law 104–106; 110 Stat. 430), is amended by adding at the end the following:

“(g)(1) A position occupied by a preference eligible shall not be placed in a single-position competitive level if the preference eligible is qualified to perform the essential functions of any other position at the same grade (or occupational level) in the competitive area. In such cases, the preference eligible shall be entitled to be placed in another competitive level for which such preference eligible is qualified. If the

preference eligible is qualified for more than one competitive level, such preference eligible shall be placed in the competitive level containing the most positions.

“(2) For purposes of paragraph (1)—

“(A) a preference eligible shall be considered qualified to perform the essential functions of a position if, by reason of experience, training, or education (and, in the case of a disabled veteran, with reasonable accommodation), a reasonable person could conclude that the preference eligible would be able to perform those functions successfully within a period of 150 days; and

“(B) a preference eligible shall not be considered unqualified solely because such preference eligible does not meet the minimum qualification requirements relating to previous experience in a specified grade (or occupational level), if any, that are established for such position by the Office of Personnel Management or the agency.

“(h) In connection with any reduction in force, a preference eligible whose current or most recent performance rating is at least fully successful (or the equivalent) shall have, in addition to such assignment rights as are prescribed by regulation, the right, in lieu of separation, to be assigned to any position within the agency conducting the reduction in force—

“(1) for which such preference eligible is qualified under subsection (g)(2)—

“(A) that is within the preference eligible’s commuting area and at the same grade (or occupational level) as the position from which the preference eligible was released, and that is then occupied by an individual, other than another preference eligible, who was placed in such position (whether by appointment or otherwise) within 6 months before the reduction in force if, within 12 months prior to the date on which such individual was so placed in such position, such individual had been employed in the same competitive area as the preference eligible; or

“(B) that is within the preference eligible’s competitive area and that is then occupied by an individual, other than another preference eligible, who was placed in such position (whether by appointment or otherwise) within 6 months before the reduction in force; or

“(2) for which such preference eligible is qualified that is within the preference eligible’s competitive area and that is not more than 3 grades (or pay levels) below that of the position from which the preference eligible was released, except that, in the case of a preference eligible with a compensable service-connected disability of 30 percent or more, this paragraph shall be applied by substituting ‘5 grades’ for ‘3 grades’.

In the event that a preference eligible is entitled to assignment to more than 1 position under this subsection, the agency shall assign the preference eligible to any such position requiring no reduction (or, if there is no such position, the least reduction) in basic pay. A position shall not, with respect to a preference eligible, be considered to satisfy the requirements of paragraph (1) or (2), as applicable, if it does not last for at least 12 months following the date on which such preference eligible is assigned to such position under this subsection.

“(i) A preference eligible may challenge the classification of any position to which the preference eligible asserts assignment rights (as provided by, or prescribed by regulations described in, subsection (h)) in an action before the Merit Systems Protection Board.

“(j)(1) As soon as practicable, but not later than 120 days, after the date of the enactment of this subsection, each agency shall establish an agencywide priority placement program to facilitate employment placement for preference eligibles who—

“(A) are scheduled to be separated from service due to a reduction in force;

or

“(B) are separated from service due to a reduction in force.

“(2) Each agencywide priority placement program shall include provisions under which a vacant position shall not be filled by the appointment or transfer of any individual from outside of that agency (other than a former employee previously separated from that agency due to a reduction in force) or by any promotion, reassignment, or other personnel action involving any individual from within that agency (other than a preference eligible or, as defined under regulations prescribed by the Office, a surplus employee) if—

“(A) there is then available any individual described in paragraph (3) who is qualified for the position; and

“(B) the position—

“(i) is at the same grade (or pay level) or not more than 2 grades (or pay levels) below that of the position last held by such individual before placement in the new position; and

“(ii) is within the same commuting area as the individual’s residence or last-held position.

“(3) For purposes of an agencywide priority placement program under this subsection, an individual shall be considered to be described in this paragraph if such individual’s most recent performance rating was at least fully successful (or the equivalent), and such individual is either—

“(A) a preference eligible of such agency who is scheduled to be separated, as described in paragraph (1)(A); or

“(B) a preference eligible who became a former employee of such agency as a result of a separation, as described in paragraph (1)(B).

“(4) A preference eligible shall cease to be eligible to participate in a program under this subsection upon the earlier of—

“(A) the end of the 24-month period beginning on the date on which the preference eligible first becomes eligible to participate under paragraph (3); or

“(B) the date on which the individual accepts or declines a bona fide offer (or, if the individual does not act on the offer, the last day for accepting such offer) from the affected agency of a position described in paragraph (2)(B).”.

SEC. 4. IMPROVED REDRESS FOR VETERANS.

(a) IN GENERAL.—Subchapter I of chapter 33 of title 5, United States Code, is amended by adding at the end the following:

“§ 3330a. Administrative redress

“(a)(1) Any preference eligible or other individual described in section 3304(f)(1) who alleges that an agency has violated such individual’s rights under any statute or regulation relating to veterans’ preference, or any right afforded such individual by section 3304(f), may file a complaint with the Secretary of Labor.

“(2) A complaint under this subsection must be filed within 60 days after the date of the alleged violation, and the Secretary shall process such complaint in accordance with sections 4322(a) through (e)(1) and 4326 of title 38.

“(b)(1) If the Secretary of Labor is unable to resolve the complaint within 60 days after the date on which it is filed, the complainant may elect to appeal the alleged violation to the Merit Systems Protection Board in accordance with such procedures as the Merit Systems Protection Board shall prescribe, except that in no event may any such appeal be brought—

“(A) before the 61st day after the date on which the complaint is filed under subsection (a); or

“(B) later than 15 days after the date on which the complainant receives notification from the Secretary of Labor under section 4322(e)(1) of title 38.

“(2) An appeal under this subsection may not be brought unless—

“(A) the complainant first provides written notification to the Secretary of Labor of such complainant’s intention to bring such appeal; and

“(B) appropriate evidence of compliance with subparagraph (A) is included (in such form and manner as the Merit Systems Protection Board may prescribe) with the notice of appeal under this subsection.

“(3) Upon receiving notification under paragraph (2)(A), the Secretary of Labor shall not continue to investigate or further attempt to resolve the complaint to which such notification relates.

“(c) This section shall not be construed to prohibit a preference eligible from appealing directly to the Merit Systems Protection Board from any action which is appealable to the Board under any other law, rule, or regulation, in lieu of administrative redress under this section.

“§ 3330b. Judicial redress

“(a) In lieu of continuing the administrative redress procedure provided under section 3330a(b), a preference eligible or other individual described in section 3304(f)(1) may elect, in accordance with this section, to terminate those administrative proceedings and file an action with the appropriate United States district court not later than 60 days after the date of the election.

“(b) An election under this section may not be made—

“(1) before the 121st day after the date on which the appeal is filed with the Merit Systems Protection Board under section 3330a(b); or

“(2) after the Merit Systems Protection Board has issued a judicially reviewable decision on the merits of the appeal.

“(c) An election under this section shall be made, in writing, in such form and manner as the Merit Systems Protection Board shall by regulation prescribe. The election shall be effective as of the date on which it is received, and the administrative proceeding to which it relates shall terminate immediately upon the receipt of such election.

“§ 3330c. Remedy

“(a) If the Merit Systems Protection Board (in a proceeding under section 3330a) or a court (in a proceeding under section 3330b) determines that an agency has violated a right described in section 3330a, the Board or court (as the case may be) shall order the agency to comply with such provisions and award compensation for any loss of wages or benefits suffered by the individual by reason of the violation involved. If the Board or court determines that such violation was willful, it shall award an amount equal to backpay as liquidated damages.

“(b) A preference eligible or other individual described in section 3304(f)(1) who prevails in an action under section 3330a or 3330b shall be awarded reasonable attorney fees, expert witness fees, and other litigation expenses.”.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 33 of title 5, United States Code, is amended by adding after the item relating to section 3330 the following:

“3330a. Administrative redress.

“3330b. Judicial redress.

“3330c. Remedy.”.

SEC. 5. EXTENSION OF VETERANS' PREFERENCE.

(a) AMENDMENT TO TITLE 5, UNITED STATES CODE.—Paragraph (3) of section 2108 of title 5, United States Code, is amended by striking “the Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service, or the General Accounting Office;” and inserting “or the Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service;”.

(b) AMENDMENTS TO TITLE 3, UNITED STATES CODE.—

(1) IN GENERAL.—Chapter 2 of title 3, United States Code, is amended by adding at the end the following:

“§ 115. Veterans' preference

“(a) Subject to subsection (b), appointments under sections 105, 106, and 107 shall be made in accordance with section 2108, and sections 3309 through 3312, of title 5.

“(b) Subsection (a) shall not apply to any appointment to a position the rate of basic pay for which is at least equal to the minimum rate established for positions in the Senior Executive Service under section 5382 of title 5 and the duties of which are comparable to those described in section 3132(a)(2) of such title or to any other position if, with respect to such position, the President makes certification—

“(1) that such position is—

“(A) a confidential or policy-making position; or

“(B) a position for which political affiliation or political philosophy is otherwise an important qualification; and

“(2) that any individual selected for such position is expected to vacate the position at or before the end of the President's term (or terms) of office.

Each individual appointed to a position described in the preceding sentence as to which the expectation described in paragraph (2) applies shall be notified as to such expectation, in writing, at the time of appointment to such position.”.

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 2 of title 3, United States Code, is amended by adding at the end the following:

“115. Veterans' preference.”.

(c) LEGISLATIVE BRANCH APPOINTMENTS.—

(1) IN GENERAL.—Subject to paragraph (3), appointments to positions in the legislative branch of the Government shall be made in accordance with section 2108, and sections 3309 through 3312, of title 5, United States Code.

(2) REDUCTIONS IN FORCE.—Subject to paragraph (3), reductions in force in the legislative branch of the Government shall provide preference eligibles with protections substantially similar to those provided under subchapter I of chapter 35 of title 5, United States Code.

(3) EXCLUSIONS.—Paragraphs (1) and (2) shall not apply to—

(A) an appointment made by the President with the advice and consent of the Senate;

(B) an appointment made by a Member of Congress or by a committee or subcommittee of either House of Congress; or

(C) an appointment to a position, the duties of which are equivalent to those of a Senior Executive Service position (within the meaning of section 3132(a)(2) of title 5, United States Code).

(4) REDRESS PROCEDURES.—The Board of Directors of the Office of Compliance (established by section 301 of the Congressional Accountability Act of 1995) shall prescribe regulations, as soon as practicable after the date of the enact-

ment of this Act, to provide preference eligibles in the legislative branch of the Government with administrative and judicial redress procedures for alleged violations of any rights provided by this subsection. Such procedures shall be substantially similar to the procedures established by the amendments made by section 4. The regulations shall provide that the General Counsel of the Office of Compliance (appointed under section 302(c) of the Congressional Accountability Act of 1995) shall perform the functions assigned to the Secretary of Labor under sections 4322 and 4326(a) of title 38, United States Code.

(d) JUDICIAL BRANCH APPOINTMENTS.—

(1) IN GENERAL.—Subject to paragraph (2), appointments to positions in the judicial branch of the Government shall be made in accordance with section 2108, and sections 3309 through 3312, of title 5, United States Code.

(2) REDUCTIONS IN FORCE.—Subject to paragraph (2), reductions in force in the judicial branch of the Government shall provide preference eligibles with protections substantially similar to those provided under subchapter I of chapter 35 of title 5, United States Code.

(3) EXCLUSIONS.—Paragraphs (1) and (2) shall not apply to—

(A) an appointment made by the President, with the advice and consent of the Senate;

(B) an appointment as a judicial officer;

(C) an appointment as a law clerk or secretary to a justice or judge of the United States; or

(D) an appointment to a position, the duties of which are equivalent to those of a Senior Executive Service position (within the meaning of section 3132(a)(2) of title 5, United States Code).

(4) REDRESS PROCEDURES.—The Judicial Conference of the United States shall prescribe regulations under which redress procedures (substantially similar to the procedures established by the amendments made by section 4) shall be available for alleged violations of any rights provided by this subsection.

(5) DEFINITIONS.—For purposes of this subsection—

(A) the term “judicial officer” means a justice, judge, or magistrate judge listed in subparagraph (A), (B), (F), or (G) of section 376(a)(1) of title 28, United States Code; and

(B) the term “justice or judge of the United States” has the meaning given such term by section 451 of such title 28.

SEC. 6. VETERANS’ PREFERENCE REQUIRED FOR REDUCTIONS IN FORCE IN THE FEDERAL AVIATION ADMINISTRATION.

Section 347(b) of the Department of Transportation and Related Agencies Appropriations Act, 1996 (109 Stat. 460) is amended by striking “and” at the end of paragraph (6), by striking the period at the end of paragraph (7) and inserting “; and”, and by adding at the end the following:

“(8) sections 3501–3504, as such sections relate to veterans’ preference.”.

SHORT SUMMARY OF LEGISLATION

H.R. 3586, as amended, strengthens veterans’ preference and increases employment opportunities for veterans. It permits veterans’ eligible for a preference and certain other veterans to overcome artificial restrictions on the scope of competition for announced vacancies, provides preference eligibles with increased protections during reductions in force, establishes an effective redress system for veterans who believe their rights have been violated, extends veterans’ preference to certain positions at the White House and in the legislative and judicial branches of government, and requires the Federal Aviation Administration to apply veterans’ preference in reductions in force.

I. BACKGROUND AND NEED FOR THE LEGISLATION

In general, veterans preference laws give certain veterans preference in appointment to civilian employment with the Federal Government based upon their military service. Congress has long recognized that this is an earned benefit, not a gift.

The current law for today's veterans preference is the Veterans' Preference Act of 1944, as amended. Under the Act, veterans are given "augmented scores" of 5 or 10 points, depending upon their status, in examinations for employment and retention preference in the event of a reduction in force. The Act also prohibits adverse actions against veterans without "cause" and required certain due process protections, such as notice and an opportunity to be heard, as well as appeals.

On April 30, 1996, the Subcommittee on Civil Service held a hearing on veterans' preference. Testimony at that hearing revealed that veterans' preference in the Federal workplace is often ignored or circumvented and that its continued viability is threatened on several fronts.

Veterans' employment in the Federal workforce is declining at a rapid rate. Indeed, the government is approaching historically low levels since the implementation of veterans' preference. As recently as 1984, veteran representation in the Federal workforce was nearly 38%, in ten years it has declined to 28% of the Government's employees. Veterans have borne a disproportionate brunt of the Government's downsizing. In part, this reflects the concentration of veterans in defense-related agencies that have accounted for 75% of recent downsizing. OPM's figures show that in September 1994, 65% of all veterans were employed in the Department of Defense, Veterans Affairs, and Treasury. (In comparison, these agencies account for only 56% of the overall Federal civilian workforce.) It also reflects the greater average age of veterans, who have accounted for over 50% of all retirements from Federal civil service in the last five years. But these figures do suggest that veterans are under represented in many Federal agencies and support the claims that Congress must create additional opportunities for veterans to obtain and retain employment with the Federal Government.

THREATS TO VETERANS PREFERENCE

Many in the veterans' community have cited a variety of strategies recently used by agencies that threaten veterans preference, whether that is their intended effect or not. A prime example is increased usage of single position competitive levels in reductions in force (RIF). In addition, evidence suggests a deep-rooted resistance to veterans' preference in the bureaucracy. A 1992 GAO study of veterans' preference, "Federal Hiring: Does Veterans' Preference Need Updating?", revealed that certificates (the list of candidates from which agencies may hire) headed by a veteran entitled to preference were returned unused at almost 1.4 times the return rate of certificates headed by nonveterans.¹ According to another GAO study, one quarter of selecting officials who returned a certificate unused to their personnel office in 1992 did so when they could not hire the candidate they wanted because a preference-eligible veteran was ranked higher.²

¹GAO, "Federal Hiring: Does Veterans' Preference Need Updating?", (March 1992), at 27. 70.6% of certificates headed by veterans were returned unused versus only 50.8% of those headed by nonveterans.

²GAO, "Federal Hiring: Reconciling Managerial Flexibility With Veterans' Preference", at 32 (June 1995).

The use of single-position competitive levels poses a threat to veterans preference because it effectively eliminates the preference eligible's ability to compete for retention at his or her grade level. The case of John Davis, a decorated Vietnam veteran who testified at the subcommittee's April 30 hearing, provides an example. Mr. Davis was placed in a single-position competitive level during a RIF at the Army Corps of Engineers, and consequently released from his position. Many in the veterans' community believe the use of this device undercut Mr. Davis's veterans' preference rights, even though both the Merit Systems Protection Board and the U.S. Court of Appeals for the Federal Circuit upheld the agency's action.

While there is no question that on rare occasions the use of single-position competitive levels is appropriate because positions are so truly unique that employees cannot move between them without disrupting productivity, the Committee recognizes that it carries great potential for abuse by enabling agencies to target individual employees and circumvent veterans' preference. Accordingly, the Committee looks upon the increasing use of single-position competitive levels—as in a RIF recently conducted by the U.S. Geological Survey, in which 97.2% of 1,100 positions were placed in unique competitive levels—with great concern.

The Committee also believes it is necessary to provide eligible veterans with stronger rights to move into other positions if they are released from their own jobs during a RIF. Again, the John Davis case illustrates why increased protection is needed. In that case, the evidence shows that before it conducted the RIF the agency actually restructured some positions to allow other employees to qualify for them and escape the RIF.³

This legislation addresses these problems by making it more difficult for agencies to place preference eligibles in single-position competitive levels. Under it, preference eligibles cannot be placed in such a competitive level if by reason of their education, training, or experience a reasonable person could conclude they would be able successfully to perform another job at the same grade and in the same competitive level within 150 days. In such cases, the preference eligible is placed in another competitive level for which he or she qualifies. And if the preference eligible qualifies for more than one competitive level, he or she is entitled to be placed in the competitive level with the most positions. In addition, the legislation provides preference eligibles with enhanced assignment rights to other positions and requires agencies to establish priority placement programs for preference eligibles who are separated or scheduled to be separated as a result of a RIF.

NOT EVERY VETERAN IS ENTITLED TO PREFERENCE

Not all of those who have served in the military are entitled to veterans preference, even though they are commonly thought of as veterans. Only those who meet the statutory definition of "preference eligible" are entitled to veterans preference.⁴ Today, most

³*Davis v. Department of the Army*, DC-0351-93-0543-I-2, initial decision at 15 (MSPB February 4, 1994).

⁴The law defines the terms "veteran" and "preference eligible" individuals to include disabled veterans, those who served in the military during wars, during specified periods of time, or in a campaign or expedition for which a campaign badge has been authorized. In addition, under

become eligible for veterans' preference by receiving a campaign badge. Consequently, many who have served in the armed forces do not have an advantage when competing for Federal jobs. Even worse, however, because agencies frequently restrict competition for positions to "status" candidates (primarily those who are already Federal civilian employees) or even to those in the agency's own workforce, these veterans are not even able to compete for many positions.

The Committee believes this is wrong. In his memorial day speech at Arlington National Cemetery, President Clinton observed, "As we honor the brave sacrifices in battle that grace our nation's history, let us also remember to honor those who served in times of peace, who preserve the peace, protect our interests and project our values. Though they are the best-trained, best-equipped military in the world, they, too, face their share of dangers." Accordingly, the Committee believes that it is incumbent upon the Federal Government to recognize the valuable Federal service all those who have served in the armed forces have performed.

In order to address this problem, Section 2 of the legislation provides that preference eligibles and other veterans who have served honorably for at least three years cannot be prevented from competing for government jobs because they do not have "status" or are not employees of the hiring agency. This section does not confer a preference on anyone not otherwise entitled to one. Agencies may hire solely from a reemployment priority list consisting of surplus and displaced employees without outside competition.

LACK OF AN ADEQUATE REDRESS MECHANISM

Compounding the concerns of many veterans and veterans groups is the lack of an adequate redress mechanism for veterans whose rights are violated. There is a widespread consensus in the veterans' community that existing redress procedures are inadequate. Indeed, testimony at the subcommittee's hearing on April 30, 1996, identified this as the central defect in veterans' preference today.

The legislation corrects this problem by creating an effective, yet user-friendly redress system for veterans. Veterans who believe their veterans' preference rights or their right to compete for positions under this Act may file a complaint with the Secretary of Labor, who is to investigate and attempt to resolve the complaint under procedures established in the Uniformed Services Employment and Reemployment Rights Act of 1994. The complainant may file an appeal with the Merit Systems Protection Board if the Secretary is unable to resolve the complaint or to do so within 60 days. The veteran is required to exhaust administrative remedies before the Board for a period of at least 120 days. However, after 120 days, but before the Board has issued a judicially reviewable decision on the merits of the case, the veteran may terminate the administrative proceeding and file a complaint in an appropriate United States district court. Under this procedure, a veteran can

certain circumstances, the spouses of disabled veterans, unmarried widows or widowers of veterans, and the mothers of individuals killed while in the military or of individuals with service-connected permanent and total disabilities are considered "preference eligibles." Special rules also apply to military retirees. 5 U.S.C. §§ 2108, 3501.

escape the administrative process if it becomes mired down, but cannot engage in forum shopping or obtain more than "one bite at the apple."

OTHER CONCERNS

Many positions at the White House and in the legislative and judicial branches of Government are not covered by current veterans' preference laws. The debt our Nation owes to those who have fought its battles should be acknowledged by all branches of Government. Accordingly, the legislation applies veterans' preference to nonpolitical positions in the White House and the legislative branch, as well as to many positions in the judicial branch.

Under the Department of Transportation and Related Agencies Appropriations Act of 1996, the Federal Aviation Administration was permitted to establish an alternative personnel system. Although that Act required the FAA to follow veterans' preference in hiring, it did not require it to do so in RIFs. This has been of great concern to many veterans at the FAA, and the Committee believes there is no reason to deprive those veterans of the preference in RIFs they have earned. Accordingly, the legislation requires the FAA to observe veterans' preference in RIFs.

II. LEGISLATIVE HEARINGS AND COMMITTEE ACTIONS

H.R. 3586 was introduced on June 5, 1996 by the Honorable John L. Mica (R-FL), Chairman of the House Subcommittee on Civil Service. The bill was referred to the Committee on Government Reform and Oversight on June 5, 1996, and it was referred to the Subcommittee on Civil Service on June 11, 1996. The subcommittee held a mark up on June 13, 1996. No amendments were offered, and the measure was ordered favorably reported to the full Committee by a voice vote. On June 20, 1996, the Committee on Government Reform and Oversight met to consider the bill. Representative Mica offered an amendment in the nature of a substitute, which was approved by voice vote. The Committee favorably reported the bill, as amended, to the full House by voice vote.

III. COMMITTEE HEARINGS AND WRITTEN TESTIMONY

On April 30, 1996 the Subcommittee held a hearing to examine whether the employment preferences accorded veterans by law are being faithfully applied by the Federal Government and ways in which opportunities can be improved.

The first panel consisted of the Honorable Stephen E. Buyer, Chairman of the Subcommittee on Education, Training, Employment, and Housing of the Committee on Veterans' Affairs, and the Honorable Jon D. Fox. Among other issues, Chairman Buyer addressed the need to strengthen veterans' preference protections during reductions in force and to provide veterans with an effective redress system. In particular, he pointed to the escalating use of single-position competitive levels in RIFs as a threat to veterans' preference. He noted that it allowed managers to "effectively dictate who will retain employment," and pointed to recent RIFs at the U.S. Geological Survey, GAO, and the Army's Audit Agency as examples. Chairman Buyer also stated that, "There is simply no ef-

fective means by which a veteran may air a preference grievance, especially if the veteran is not hired." Establishing a redress system that provides a reasonable remedy for veterans is, he testified, a "primary concern."

Congressman Fox testified in support of H.R. 2510, his bill to extend veterans' preference to those who served in connection with Operations Desert Shield and Desert Storm. In his testimony, Congressman Fox pointed out that many reservists and National Guard members were ordered to active duty during the Persian Gulf War. Some were deployed to the theater of operations. Others were ordered to serve outside the theater. Those who served in the theater now qualify for veterans' preference. But those who served elsewhere do not, even though their contributions were also essential to the ultimate success of our military operations in the Persian Gulf.

On the second panel were James Daub, John Davis, and John Fales. Mr. Daub, a reservist who was called to active duty to support Operations Desert Shield and Desert Storm. He pointed out that his unit was split into two groups, one of which was sent to the Desert and his group was sent to Rhein Mein Air Force Base in Germany. The group in Germany performed aircraft maintenance that could not be performed in the theater. This was a task that was critical to the success of our combat operations and a task they performed proudly and to the utmost of their abilities. Those who served in Southwest Asia are now entitled to veterans preference, whereas those such as Mr. Daub who were uprooted from their families and their federal jobs enjoy no more job protections than "the non-veteran who was home with his family watching the war on CNN." This is a matter of great concern to these veterans in this era of government downsizing, particularly those employed at the Department of Defense.

Mr. Davis, a Vietnam veteran who was awarded the Distinguished Flying Cross, the Bronze Star, and multiple awards of the Air Medal, described his experience during a RIF at the Army Corps of Engineers. He testified that in March 1993, the Corps headquarters announced that it would conduct a 50-person RIF. Mr. Davis was placed in a single-position competitive level. Consequently, Mr. Davis was the only employee covered by the RIF who was actually downgraded. (None were separated as a result of the RIF.) Moreover, Mr. Davis was not permitted assignment rights to positions for which he appeared capable of performing, including one job almost identical to the position he held before the RIF. In contrast, however, Mr. Davis testified, prior to the RIF management went to great lengths to place other individuals whose jobs were to be abolished into positions at their current grade levels. In some cases, the agency actually created positions for these other employees that did not exist prior to the RIF. Nevertheless, both the Merit Systems Protection Board and the United States Court of Appeals for the Federal Circuit upheld the agency's action.

Mr. Fales is a decorated blinded Vietnam veteran who is a full-time federal employee and president of the Blinded American Veterans Foundation. In his testimony, Mr. Fales emphasized the importance of recognizing the important service of the hundreds of thousands of American troops supporting America's military mis-

sions around the world. He pointed out that in the past five years the military has released 800,000 men and women from the armed forces, many of whom were not eligible for veterans' preference, which made their transition and pursuit of a federal job much more difficult. Mr. Fales also testified that there are many in the federal bureaucracy who actively seek to circumvent veterans' preference, and emphasized the need for improved remedies to deter future violations.

The subcommittee also heard testimony from Ronald W. Drach, the National Employment Director for the Disabled Veterans of America, and Emil Naschinski, Assistant Director, National Economics Commission, of the American Legion. Both testified that the lack of an effective redress system is the key defect in current veterans' preference law. Mr. Drach stated that "there has never been a meaningful appeal/redress system available to an individual or a veterans' service organization * * * if either thought veterans' preferences were being violated," and he contended that the Office of Personnel Management's "less than aggressive enforcement of veterans' preference" persuaded agencies they were free to ignore veterans' preference. Mr. Naschinski emphasized that, "If Congress is serious about improving veterans' preference, it must provide a clear, independent and user friendly redress mechanism that can be utilized by veterans who believe their veterans' preference rights have been violated." Both witnesses also testified to the importance of strengthening protections for veterans during RIFs and warned of the potential erosion of veterans' preference through the proliferation of alternative personnel systems.

In addition to this testimony, the subcommittee also received several statements for the record. These included statements from such veterans' groups as the Veterans Economic Action Coalition, Vietnam Veterans of America, and the Non-Commissioned Officers Association of the United States of America, and from the Honorable James B. King, the Director of OPM. Among other issues, these groups, too, emphasized the importance of establishing an effective redress system for veterans. Director King generally defended the Clinton Administration's record in implementing and enforcing veterans' preference.

IV. EXPLANATION OF THE BILL AS REPORTED

SECTION-BY-SECTION ANALYSIS

Section 1.—Short title

The short title of this Act is "The Veterans' Employment Opportunities Act of 1996."

Section 2.—Equal access for veterans

Subsection (a) amends 5 U.S.C. § 3304 by adding a new subsection (f), which provides that a preference eligible or a veteran who has been honorably discharged after three years of service in the armed forces may not be barred from competition for announced vacancies in the competitive or excepted service because he or she has not acquired competitive status or is not an employee of a particular agency. However, agencies are not prohibited from filling vacant positions solely from a priority placement list consist-

ing of former employees who were separated from the agency due to a reduction in force and surplus employees.

Subsection (b) amends 5 U.S.C. § 3327 to require OPM to maintain and publicize to state employment services all vacancies for which a veteran may apply under this section.

Subsection (c) amends 5 U.S.C. § 3330(b) to require OPM to maintain a comprehensive governmentwide list of vacant positions for which veterans may apply and to make clear that OPM may contract for this function.

Section 3.—Special protections for preference eligibles in reductions in force

This section provides special protections for preference eligible employees when their agency is conducting a RIF (reduction in force). Congress recognizes that single-position competitive levels pose a threat to veterans' preference in RIFs, and therefore agencies are prohibited from placing any position occupied by a preference eligible in such a competitive level if the preference eligible is qualified (as defined in this Act) to perform the essential functions of any other position at the same grade and in the same competitive area. In such cases the preference eligible is entitled to be placed in another competitive level, and if the preference eligible is qualified for more than one other competitive level, he or she is entitled to be placed in the competitive level containing the most positions.

Preference eligibles are also provided enhanced assignment rights. A preference eligible whose current or most recent performance rating is fully successful or better shall have assignment rights to:

- (1) any position for which he or she is qualified (as defined in this Act) at the same grade level within the agency conducting the RIF that is in the commuting area and that is currently held by someone (other than another preference eligible) who was placed in the position within 6 months before the reduction in force if, within 12 months prior to such placement, that person had been employed in the same competitive area as the preference eligible;
- (2) any position in the competitive area for which the preference eligible is qualified (as defined in this Act) and that is then held by an individual, other than another preference eligible, who was placed in the position within 6 months before the RIF; or
- (3) any position in the competitive area that is not more than 3 grades or pay levels (5 grades or pay levels in the case of a preference eligible with a service-connected disability of 30% or more) below the position from which the preference eligible was released. The special test for determining qualifications defined in this Act does not apply in this situation.

These assignment rights are in addition to any assignment rights positions prescribed by regulations issued by the Office of Personnel Management.

For the purposes of determining whether a position may be put in a single-position competitive level or certain assignment rights of a preference eligible, the preference eligible shall be considered

qualified for another position if by reason of experience, training, or education a reasonable person could conclude that the preference eligible would be able to perform the essential functions of the position successfully within a period of 150 days.

A preference eligible may challenge the classification of any position to which he asserts assignment rights in an action before the Merit Systems Protection Board.

Agencies are also required to establish agency wide priority placement programs for preference eligibles who are scheduled to be separated or are actually separated by a RIF and whose current or most recent performance rating was at least fully successful or the equivalent. The agency may not fill any vacancy by appointment or transfer of any person from outside or inside the agency (other than surplus or displaced employees) if there is a qualified preference eligible on the reemployment priority placement list. An individual may remain on the list for 24 months or, if earlier, until he accepts or declines an agency's bona fide offer of employment at a level not more than two grades below the position from which he was released and within the commuting area.

Section 4.—Improved redress for veterans

Subsection (a) amends chapter 33 of title 5 by adding three new sections (sections 3330a–3330c) to create a redress system for veterans that is user-friendly, yet effective. This redress mechanism covers preference eligibles and, for violations of the right to compete created in section 2 of this Act, individuals honorably discharged from the armed forces after three years of service. Under this system, the individual first must file a complaint with the Secretary of Labor within 60 days of the alleged violation. The Secretary will investigate and attempt to resolve the complaint in accordance with provisions of the Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. §§4322(a)–(e)(1), 4326. The individual may file an appeal with the Merit Systems Protection Board if the Secretary is unable to resolve the complaint within 60 days or if the Secretary notifies the individual that he is unable to resolve the complaint. An individual who elects to file an appeal with the Merit Systems Protection Board must notify the Secretary of this election, and the Secretary is to discontinue his efforts to investigate or resolve the complaint.

An individual who files an appeal with the Merit Systems Protection Board under this section must exhaust that remedy for at least 120 days. At any time after that point, but before the Merit Systems Protection Board issues a judicially reviewable decision on the merits, the individual may terminate the administrative proceeding and file an action with the appropriate United States district court.

An individual who prevails is entitled to “make-whole” relief and, if the MSPB or district court determines that the agency's violation was willful, monetary damages equal to the amount of back pay awarded. The MSPB or district court shall award reasonable attorney's fees and litigation expenses to an individual who prevails.

Subsection (b) makes a clerical amendment to the table of sections at the beginning of chapter 33, of title 5, United States Code.

Section 5.—Extension of veterans' preference

This section extends veterans' preference to certain positions in the judicial branch and to non-political jobs at the White House and in the legislative branch.

Subsection (a) amends 5 U.S.C. § 2108 to require the General Accounting Office to apply veterans' preference in hiring. (GAO is already covered by veterans' preference with respect to RIFs.)

Subsection (b) amends title 3 of the United States Code by adding a new section 115 to cover certain positions at the White House. Positions that are equivalent to positions in the Senior Executive Service are exempt, as are positions that the President certifies are confidential or policy-making positions or for which political affiliation or political philosophy is otherwise an important qualification and whose occupants are expected to leave on or before the end of the President's Administration.

Subsection (c) extends veterans' preference to positions in the legislative branch. Positions for which the appointment is made by the President with the advice and consent of the Senate, appointments by Members of Congress, and positions equivalent to Senior Executive Service positions are exempt. The Board of Directors of the Office of Compliance is required to establish a redress system for the legislative branch that is substantially similar to the system established under section 4 of this Act.

Subsection (d) applies veterans' preference to positions in the judicial branch. It exempts positions for which the appointment is made by the President with the advice and consent of the Senate, judicial officers, appointments as law clerks or secretaries to judges or Justices, and positions equivalent to Senior Executive Service positions. The Judicial Conference is required to establish a redress system for the judicial branch that is substantially similar to the system established under section 4 of this Act.

Section 6.—Veterans' preference required for RIFs in the FAA

This section amends section 347(b) of the Department of Transportation and Related Agencies Appropriations Act, 1996 (109 Stat. 460) to require the Federal Aviation Administration to apply veterans' preference in reductions in force. Current law requires the FAA to apply veterans' preference in hiring.

V. COMPLIANCE WITH RULE XI

Pursuant to rule XI, clause 2(1)(3) of the Rules of the House of Representatives, under the authority of rule X, clause 2(b)(1) and clause 3(f), the results and findings from committee oversight activities are incorporated in the bill and this report.

VI. BUDGET ANALYSIS AND PROJECTIONS

Pursuant to section 308(a)(1)(A), the bill provides for an increase in direct spending of less than \$500,000. The allocation in the Joint Statement of the Managers accompanying H. Con. Res. 178 does not provide to the Committee on Government Reform and Oversight any net increase in new budget authority or new entitlement authority subject to discretionary action. The estimate by the Congressional Budget Office of how the measure will affect budget au-

thority, budget outlays, and spending authority is set forth in this report, as in any amount of new budget authority for assistance to State and local governments.

VII. COST ESTIMATE OF THE CONGRESSIONAL BUDGET OFFICE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 8, 1996.

Hon. WILLIAM F. CLINGER, Jr.,
*Chairman, Committee on Government Reform and Oversight, U.S.
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 3586, the Veterans Employment Opportunities Act of 1996, as ordered reported by the House Committee on Government Reform and Oversight on June 20, 1996. We expect that enacting H.R. 3586 would increase personnel recruitment and management costs of the federal government, though we cannot estimate the amount of the added costs. For most agencies, any increase in spending would be subject to the availability of appropriated funds.

The bill could also increase direct spending by agencies not funded through annual appropriations. Therefore, pay-as-you-go procedures would apply to the bill. With the possible exception of costs for the U.S. Postal Service, the bill's impact on direct spending is not likely to be significant. Spending by the Postal Service, however, is classified as off-budget and is not subject to pay-as-you-go procedures.

Bill Purpose.—H.R. 3586 would strengthen and, in the case of hiring, broaden the applicability of a set of laws popularly known as veterans' preference, which afford certain veterans preferential treatment in obtaining and keeping federal employment. Specifically, the bill would:

Prohibit a federal agency from limiting the pool of potential applicants for a vacancy to its current employees or to individuals already employed by the government;

Prohibit an agency from classifying a position occupied by an eligible veteran as unique for purposes of a reduction-in-force (RIF) if the individual could reasonably perform the essential duties of other comparable positions within 150 days;

Entitle an involuntarily separated veteran, eligible for preference, to claim assignment to certain positions filled by the agency in the six months prior to a RIF;

Require agencies to establish a priority placement program for veterans, whereby an agency would be required to offer a veteran affected by a RIF any comparable vacancy located within the commuting area;

Allow veterans to appeal alleged violations of preference rights in hiring decisions to the Merit System Protection Board (MSPB) and to terminate proceedings with the MSPB and file an action with a United States district court;

Require either the MSPB or a court to award expenses and limited damages in certain cases; and

Extend veterans' preference to include the General Accounting Office, non-political positions at the White House, and certain positions within the legislative and judicial branches.

Federal Budgetary Impact.—Several provisions of H.R. 3586 would increase the costs to the federal government to administer and enforce the laws governing veterans' preference. However, because we have no way of predicting the number of veterans who would be affected by the bill's provisions, particularly the number of veterans who might seek redress under the bill's expanded procedures, CBO cannot estimate the amount of these additional costs. Areas of potential costs resulting from the bill are described below.

The largest potential budgetary impact of the bill would result from provisions that would allow veterans to appeal hiring decisions to the MSPB and to appeal both hiring and RIF decisions to a district court, and that would increase the amount of redress that an eligible veteran could receive for an affirmed violation. By expanding the number of veterans eligible to appeal hiring decisions, enacting H.R. 3586 could significantly increase the workload—and hence, the expenses—of both the Department of Labor and the MSPB, which together would handle most appeals.

In cases where the complainant prevails, the bill would require that the agency pay reasonable attorney fees, expert witness fees, and other litigation expenses. Currently, successful complainants are awarded only attorney fees. In cases where a violation is deemed as willful, H.R. 3586 also would require the MSPB or district court to order the agency to pay damages in addition to any lost wages or benefits. The amount of damages would be limited to the amount of back pay owed by the agency. Thus, H.R. 3586 would likely result in the appeal of more cases, particularly those related to grievances over hiring decisions, and in the awarding of higher monetary judgments. CBO has no basis for estimating the number or cost of these additional appeals.

Second, the bill would require agencies to ensure that eligible veterans have the opportunity to compete for any vacancy. The provision would result in agencies adding to the Federal Job Opportunities List positions that would otherwise be filled by employees who work for the agency or elsewhere in the federal government. Thus, the bill would require agencies to transmit additional information to the Office of Personnel Management and would force agencies to delay hiring individuals for positions that they typically fill quickly. The extra time needed to provide veterans with a reasonable opportunity to apply and for agencies to process and consider additional applicants could lengthen the time positions remain vacant, and could impair the ability of some agencies to administer their programs and operations. For some agencies, this delay could result in extra overtime or contract costs; for others, the delay could reduce the amount spent on salaries and expenses.

Third, the bill would expand existing protections for veterans affected by a RIF to include the right to claim assignment to certain comparable positions filled by the agency prior to a veteran's separation. At the same time, the bill would make it more difficult for agencies to classify a position held by a veteran as unique. For a RIF, the bill would define a position as comparable if the veteran could reasonably be expected to perform the essential duties within

150 days. Thus, enacting H.R. 3586 would make it less likely that an agency would lay off an eligible veteran. But since the RIF would still occur, we expect that any increase in costs to the federal government to comply with this provision would not be significant.

Finally, the bill would extend certain provisions of veterans' preference to non-political jobs at the White House, and to the agencies that support the Congress and the judiciary, such as CBO, the Library of Congress, the Capitol Police, and the Administrative Office of the United States Courts. For those agencies that support the judiciary and the Congress, such an application would be difficult to implement. Because the employees of these agencies are not part of the Civil Service and since the agencies do not administer a test or use a point system that lends itself to factoring in the additional points required by law for preference-eligible veterans, it is uncertain how these agencies would comply with this provision. If the extension of veterans' preference resulted in the agencies instituting a new system for judging and hiring applicants, the associated costs could be significant. The bill also would direct the Office of Compliance and the Judicial Conference of the United States to establish procedures to provide veterans employed in the legislative and judicial branch with redress procedures similar to those available to executive branch employees. Thus, the agencies could also face new, potentially costly litigation related to grievances filed under this provision.

Mandates Statement.—H.R. 3586 contains no intergovernmental or private-sector mandates as defined in Public Law 104–4 and would have no impact on the budgets of state, local, or tribal governments.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is John R. Righter.

Sincerely,

PAUL VAN DE WATER
(For June E. O'Neill, Director).

VIII. INFLATIONARY IMPACT STATEMENT

In accordance with rule XI, clause 2(1)(4) of the Rules of the House of Representatives, this legislation is assessed to have no inflationary effect on prices and costs in the operation of the national economy.

IX. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in *italic*, existing law in which no change is proposed is shown in roman):

TITLE 5, UNITED STATES CODE

* * * * *

PART III—EMPLOYEES

* * * * *

Subpart A—General Provisions

CHAPTER 21—DEFINITIONS

* * * * *

§ 2108. Veteran; disabled veteran; preference eligible

For the purpose of this title—

(1) * * *

* * * * *

(3) “preference eligible” means, except as provided in paragraph (4) of this section—

(A) * * *

* * * * *

but does not include applicants for, or members of, the Senior Executive Service, the Defense Intelligence Senior Executive Service, the Senior Cryptologic Executive Service, [the Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service, or the General Accounting Office;] *or the Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service;*

* * * * *

Subpart B—Employment and Retention—

* * * * *

CHAPTER 33—EXAMINATION, SELECTION, AND PLACEMENT

SUBCHAPTER I—EXAMINATION, CERTIFICATION, AND APPOINTMENT

Sec.

3301. Civil service; generally.

* * * * *

3330. Government-wide list of vacant positions.

3330a. *Administrative redress.*

3330b. *Judicial redress.*

3330c. *Remedy.*

* * * * *

SUBCHAPTER I—EXAMINATION, CERTIFICATION, AND APPOINTMENT

* * * * *

§ 3304. Competitive service; examinations

(a) * * *

* * * * *

(f)(1) *No preference eligible, and no individual (other than a preference eligible) who has been separated from the armed forces under honorable conditions after 3 or more years of active service, shall be denied the opportunity to compete for an announced vacant position*

within an agency, in the competitive service or the excepted service, by reason of—

(A) not having acquired competitive status; or

(B) not being an employee of such agency.

(2) Nothing in this subsection shall prevent an agency from filling a vacant position (whether by appointment or otherwise) solely from individuals on a priority placement list consisting of individuals who have been separated from the agency due to a reduction in force and surplus employees (as defined under regulations prescribed by the Office).

* * * * *

§ 3327. Civil service employment information

(a) The Office of Personnel Management shall provide that information concerning opportunities to participate in competitive examinations conducted by, or under authority delegated by, the Office of Personnel Management shall be made available to the employment offices of the United States Employment Service.

(b) Subject to such regulations as the Office may issue, each agency shall promptly notify the Office and the employment offices of the United States Employment Service of—

(1) each vacant position in the agency which is in the competitive service or the Senior Executive Service and for which the agency seeks applications from persons outside the Federal service, **[and]**

(2) *each vacant position in the agency for which competition is restricted to individuals having competitive status or employees of such agency, excluding any position under paragraph (1), and*

[(2)] (3) the period during which applications will be accepted.

As used in this subsection, “agency” means an agency as defined in section 5102(a)(1) of this title other than an agency all the positions in which are excepted by statute from the competitive service.

(c) *Any notification provided under this section shall, for all positions under subsection (b)(1) as to which section 3304(f) applies and for all positions under subsection (b)(2), include a notation as to the applicability of section 3304(f) with respect thereto.*

(d) *In consultation with the Secretary of Labor, the Office shall submit to Congress and the President, no less frequently than every 2 years, a report detailing, with respect to the period covered by such report—*

(1) the number of positions listed under this section during such period;

(2) the number of preference eligibles and other individuals described in section 3304(f)(1) referred to such positions during such period; and

(3) the number of preference eligibles and other individuals described in section 3304(f)(1) appointed to such positions during such period.

* * * * *

§ 3330. Government-wide list of vacant positions

(a) For the purpose of this section, the term “agency” means an Executive agency, excluding the General Accounting Office and any agency (or unit thereof) whose principal function is the conduct of foreign intelligence or counterintelligence activities, as determined by the President.

[(b) The Office of Personnel Management shall establish and keep current a comprehensive list of all announcements of vacant positions in the competitive service within each agency that are to be filled by appointment for more than one year and for which applications are being (or will soon be) accepted from outside the agency’s work force.]

(b) *The Office of Personnel Management shall cause to be established and kept current—*

(1) a comprehensive list of all announcements of vacant positions (in the competitive service and the excepted service, respectively) within each agency that are to be filled by appointment for more than 1 year and for which applications are being or will soon be accepted from outside the agency’s work force; and

(2) a comprehensive list of all announcements of vacant positions within each agency for which applications are being or will soon be accepted and for which competition is restricted to individuals having competitive status or employees of such agency, excluding any position required to be listed under paragraph (1).

(c) Included for any position listed shall be—

(1) a brief description of the position, including its title, tenure, location, and rate of pay;

(2) application procedures, including the period within which applications may be submitted and procedures for obtaining additional information; [and]

(3) for all positions under subsection (b)(1) as to which section 3304(f) applies and for all positions under subsection (b)(2), a notation as to the applicability of section 3304(f) with respect thereto; and

[(3)] (4) any other information which the Office considers appropriate.

(d) [The list] *Each list under subsection (b) shall be available to members of the public.*

* * * * *

§ 3330a. Administrative redress

(a)(1) *Any preference eligible or other individual described in section 3304(f)(1) who alleges that an agency has violated such individual’s rights under any statute or regulation relating to veterans’ preference, or any right afforded such individual by section 3304(f), may file a complaint with the Secretary of Labor.*

(2) A complaint under this subsection must be filed within 60 days after the date of the alleged violation, and the Secretary shall process such complaint in accordance with sections 4322(a) through (e)(1) and 4326 of title 38.

(b)(1) If the Secretary of Labor is unable to resolve the complaint within 60 days after the date on which it is filed, the complainant

may elect to appeal the alleged violation to the Merit Systems Protection Board in accordance with such procedures as the Merit Systems Protection Board shall prescribe, except that in no event may any such appeal be brought—

(A) before the 61st day after the date on which the complaint is filed under subsection (a); or

(B) later than 15 days after the date on which the complainant receives notification from the Secretary of Labor under section 4322(e)(1) of title 38.

(2) An appeal under this subsection may not be brought unless—

(A) the complainant first provides written notification to the Secretary of Labor of such complainant's intention to bring such appeal; and

(B) appropriate evidence of compliance with subparagraph (A) is included (in such form and manner as the Merit Systems Protection Board may prescribe) with the notice of appeal under this subsection.

(3) Upon receiving notification under paragraph (2)(A), the Secretary of Labor shall not continue to investigate or further attempt to resolve the complaint to which such notification relates.

(c) This section shall not be construed to prohibit a preference eligible from appealing directly to the Merit Systems Protection Board from any action which is appealable to the Board under any other law, rule, or regulation, in lieu of administrative redress under this section.

§3330b. Judicial redress

(a) In lieu of continuing the administrative redress procedure provided under section 3330a(b), a preference eligible or other individual described in section 3304(f)(1) may elect, in accordance with this section, to terminate those administrative proceedings and file an action with the appropriate United States district court not later than 60 days after the date of the election.

(b) An election under this section may not be made—

(1) before the 121st day after the date on which the appeal is filed with the Merit Systems Protection Board under section 3330a(b); or

(2) after the Merit Systems Protection Board has issued a judicially reviewable decision on the merits of the appeal.

(c) An election under this section shall be made, in writing, in such form and manner as the Merit Systems Protection Board shall by regulation prescribe. The election shall be effective as of the date on which it is received, and the administrative proceeding to which it relates shall terminate immediately upon the receipt of such election.

§3330c. Remedy

(a) If the Merit Systems Protection Board (in a proceeding under section 3330a) or a court (in a proceeding under section 3330b) determines that an agency has violated a right described in section 3330a, the Board or court (as the case may be) shall order the agency to comply with such provisions and award compensation for any loss of wages or benefits suffered by the individual by reason of the violation involved. If the Board or court determines that such viola-

tion was willful, it shall award an amount equal to backpay as liquidated damages.

(b) A preference eligible or other individual described in section 3304(f)(1) who prevails in an action under section 3330a or 3330b shall be awarded reasonable attorney fees, expert witness fees, and other litigation expenses.

* * * * *

CHAPTER 35—RETENTION PREFERENCE, RESTORATION, AND REEMPLOYMENT

* * * * *

SUBCHAPTER I—RETENTION PREFERENCE

* * * * *

§ 3502. Order of retention

(a) * * *

* * * * *

(g)(1) A position occupied by a preference eligible shall not be placed in a single-position competitive level if the preference eligible is qualified to perform the essential functions of any other position at the same grade (or occupational level) in the competitive area. In such cases, the preference eligible shall be entitled to be placed in another competitive level for which such preference eligible is qualified. If the preference eligible is qualified for more than one competitive level, such preference eligible shall be placed in the competitive level containing the most positions.

(2) For purposes of paragraph (1)—

(A) a preference eligible shall be considered qualified to perform the essential functions of a position if, by reason of experience, training, or education (and, in the case of a disabled veteran, with reasonable accommodation), a reasonable person could conclude that the preference eligible would be able to perform those functions successfully within a period of 150 days; and

(B) a preference eligible shall not be considered unqualified solely because such preference eligible does not meet the minimum qualification requirements relating to previous experience in a specified grade (or occupational level), if any, that are established for such position by the Office of Personnel Management or the agency.

(h) In connection with any reduction in force, a preference eligible whose current or most recent performance rating is at least fully successful (or the equivalent) shall have, in addition to such assignment rights as are prescribed by regulation, the right, in lieu of separation, to be assigned to any position within the agency conducting the reduction in force—

(1) for which such preference eligible is qualified under subsection (g)(2)—

(A) that is within the preference eligible's commuting area and at the same grade (or occupational level) as the position from which the preference eligible was released,

and that is then occupied by an individual, other than another preference eligible, who was placed in such position (whether by appointment or otherwise) within 6 months before the reduction in force if, within 12 months prior to the date on which such individual was so placed in such position, such individual had been employed in the same competitive area as the preference eligible; or

(B) that is within the preference eligible's competitive area and that is then occupied by an individual, other than another preference eligible, who was placed in such position (whether by appointment or otherwise) within 6 months before the reduction in force; or

(2) for which such preference eligible is qualified that is within the preference eligible's competitive area and that is not more than 3 grades (or pay levels) below that of the position from which the preference eligible was released, except that, in the case of a preference eligible with a compensable service-connected disability of 30 percent or more, this paragraph shall be applied by substituting "5 grades" for "3 grades".

In the event that a preference eligible is entitled to assignment to more than 1 position under this subsection, the agency shall assign the preference eligible to any such position requiring no reduction (or, if there is no such position, the least reduction) in basic pay. A position shall not, with respect to a preference eligible, be considered to satisfy the requirements of paragraph (1) or (2), as applicable, if it does not last for at least 12 months following the date on which such preference eligible is assigned to such position under this subsection.

(i) A preference eligible may challenge the classification of any position to which the preference eligible asserts assignment rights (as provided by, or prescribed by regulations described in, subsection (h)) in an action before the Merit Systems Protection Board.

(j)(1) As soon as practicable, but not later than 120 days, after the date of the enactment of this subsection, each agency shall establish an agencywide priority placement program to facilitate employment placement for preference eligibles who—

(A) are scheduled to be separated from service due to a reduction in force; or

(B) are separated from service due to a reduction in force.

(2) Each agencywide priority placement program shall include provisions under which a vacant position shall not be filled by the appointment or transfer of any individual from outside of that agency (other than a former employee previously separated from that agency due to a reduction in force) or by any promotion, reassignment, or other personnel action involving any individual from within that agency (other than a preference eligible or, as defined under regulations prescribed by the Office, a surplus employee) if—

(A) there is then available any individual described in paragraph (3) who is qualified for the position; and

(B) the position—

(i) is at the same grade (or pay level) or not more than 2 grades (or pay levels) below that of the position last held by such individual before placement in the new position; and

- (ii) *is within the same commuting area as the individual's residence or last-held position.*
- (3) *For purposes of an agencywide priority placement program under this subsection, an individual shall be considered to be described in this paragraph if such individual's most recent performance rating was at least fully successful (or the equivalent), and such individual is either—*
- (A) *a preference eligible of such agency who is scheduled to be separated, as described in paragraph (1)(A); or*
- (B) *a preference eligible who became a former employee of such agency as a result of a separation, as described in paragraph (1)(B).*
- (4) *A preference eligible shall cease to be eligible to participate in a program under this subsection upon the earlier of—*
- (A) *the end of the 24-month period beginning on the date on which the preference eligible first becomes eligible to participate under paragraph (3); or*
- (B) *the date on which the individual accepts or declines a bona fide offer (or, if the individual does not act on the offer, the last day for accepting such offer) from the affected agency of a position described in paragraph (2)(B).*

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TITLE 3, UNITED STATES CODE

* * * * *

CHAPTER 2—OFFICE AND COMPENSATION OF PRESIDENT

Sec.

101. Commencement of term of office.

* * * * *

115. *Veterans' preference.*

* * * * *

§ 115. Veterans' preference

(a) *Subject to subsection (b), appointments under sections 105, 106, and 107 shall be made in accordance with section 2108, and sections 3309 through 3312, of title 5.*

(b) *Subsection (a) shall not apply to any appointment to a position the rate of basic pay for which is at least equal to the minimum rate established for positions in the Senior Executive Service under section 5382 of title 5 and the duties of which are comparable to those described in section 3132(a)(2) of such title or to any other position if, with respect to such position, the President makes certification—*

(1) *that such position is—*

(A) *a confidential or policy-making position; or*

(B) *a position for which political affiliation or political philosophy is otherwise an important qualification; and*

(2) *that any individual selected for such position is expected to vacate the position at or before the end of the President's term (or terms) of office.*

Each individual appointed to a position described in the preceding sentence as to which the expectation described in paragraph (2) applies shall be notified as to such expectation, in writing, at the time of appointment to such position.

* * * * *

SECTION 347 OF THE DEPARTMENT OF TRANSPORTATION AND RELATED AGENCIES APPROPRIATIONS ACT, 1996

SEC. 347. (a) * * *

(b) The provisions of title 5, United States Code, shall not apply to the new personnel management system developed and implemented pursuant to subsection (a), with the exception of—

(1) section 2302(b), relating to whistleblower protection;

* * * * *

(6) chapter 81, relating to compensation for work injury;
[and]

(7) chapters 83–85, 87, and 89, relating to retirement, unemployment compensation, and insurance coverage[.]; and

(8) sections 3501–3504, as such sections relate to veterans' preference.

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X. COMMITTEE RECOMMENDATION

On June 20, 1996, a quorum being present, the Committee ordered the bill, as amended, favorably reported.

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT—104TH
CONGRESS—ROLLCALL

Date: June 20, 1996.

Final Passage of H.R. 3586, as amended.

Offered by: Hon. John L. Mica (R-FL).

Voice Vote: yea.

XI. CONGRESSIONAL ACCOUNTABILITY ACT; PUBLIC LAW 104–1; SECTION 102(b)(3)

H.R. 3586, as amended by the committee, requires the legislative branch to apply veterans' preference in hiring and reductions in force.